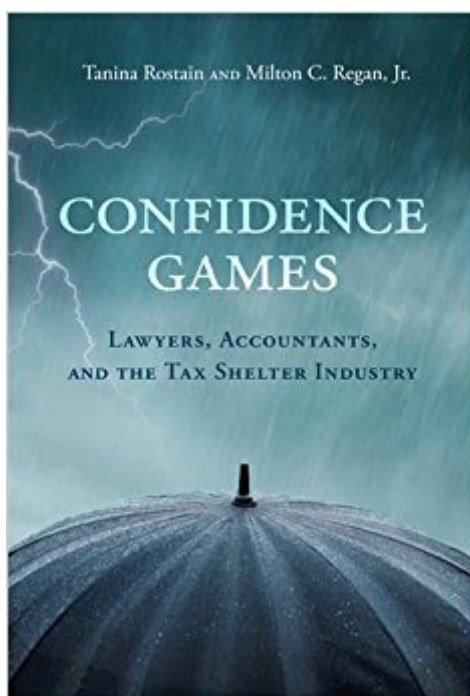


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Confidence Games: Lawyers, Accountants, And The Tax Shelter Industry (MIT Press)



Synopsis

For ten boom-powered years at the turn of the twenty-first century, some of America's most prominent law and accounting firms created and marketed products that enabled the very rich -- including newly minted dot-com millionaires -- to avoid paying their fair share of taxes by claiming benefits not recognized by law. These abusive domestic tax shelters bore such exotic names as BOSS, BLIPS, and COBRA and were developed by such prestigious firms as KPMG and Ernst & Young. They brought in hundreds of millions of dollars in fees from clients and bilked the U.S. Treasury of billions in revenues before the IRS and Justice Department stepped in with civil penalties and criminal prosecutions. In *Confidence Games*, Tanina Rostain and Milton Regan describe the rise and fall of the tax shelter industry during this period, offering a riveting account of the most serious episode of professional misconduct in the history of the American bar. Rostain and Regan describe a beleaguered IRS preoccupied by attacks from antitax and antigovernment politicians; heightened competition for professional services; the relaxation of tax practitioner norms against aggressive advice; and the creation of complex financial instruments that made abusive shelters harder to detect. By 2004, the tax shelter boom was over, leaving failed firms, disgraced professionals, and prison sentences in its wake. Rostain and Regan's cautionary tale remains highly relevant today, as lawyers and accountants continue to face intense competitive pressure and regulators still struggle to keep pace with accelerating financial risk and innovation.

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Customer Reviews

Confidence Games is a lively and deeply informed human story of what went on inside the big legal and accounting firms before, during, and after the tax shelter scandals that made front page news at the turn of the millennium. Rostain and Regan give readers a solid primer, translating arcane principles of accounting. Then they add a human touch with telling details mined from a public record few others have explored. (David Cay Johnston, Pulitzer Prize-winning tax journalist and Syracuse University law and accounting lecturer) Few of us imagine that we will cross the line in our professional lives -- and be jailed, fined, or both. But Confidence Games tells a sobering tale of individual weakness and institutional and regulatory failure that allowed esteemed law firms, accounting firms, and multinationals to reap illegal profits at the expense of the nation. (Diane Ring, Professor of Law, Boston College Law School, and coauthor of Ethical Problems in Federal Taxation) This book manages what many might think impossible: it's a page-turner about tax. It shows what can happen when very smart people unconstrained by ethics invent and use ingenious schemes. The history is fascinating in its own right, but it is also, unfortunately, a much-needed reminder of how gameable regulation can be. (Claire Hill, Professor and James L. Krusemark Chair in Law, University of Minnesota Law School) Rostain and Regan have captured one of the most interesting -- and most troubling -- episodes in the checkered history of tax shelters. Their analysis raises critical ethical and policy questions about how we train, monitor, and discipline lawyers and other financial professionals today. (Anne L. Alstott, Jacquin D. Bierman Professor in Taxation, Yale Law School)

Tanina Rostain is Professor of Law and Research Director of the Center for the Study of the Legal Profession at Georgetown Law School. Milton C. Regan, Jr., is Codirector of the Center for the Study of the Legal Profession and McDevitt Professor of Jurisprudence at Georgetown Law School.

The authors provide a good overview of a black period for tax compliance. Most tax practitioners did not succumb to the pressures. They not only did not participate in the tax shelter industry themselves; they advised their clients who were pitched these shelters that they should not take part. They probably lost some business as a result, but later they were proved right. And those clients they persuaded not to invest in the shelters were eventually thankful. But some practitioners did participate in the tax shelter industry. Too many. New entrants to the profession see the many, sometimes oppressive constraints we face today - harsh penalties, the reportable transactions requirements, the standards of Circular 230 (recently relaxed somewhat), requirements to point out uncertain tax positions, pressure on privilege issues and work product (even opinion

work product which has always justly received exceptional protection in other fields), etc. - that go beyond what other attorneys face. And they may find it difficult to comprehend how prestigious law and accounting firms got involved in these tax shelters. How could this have happened? What were they thinking? This account helps explain why. Those who don't work in the field may have little or no knowledge of this period in tax compliance and tax enforcement. Those people are, I assume, the real audience for this book. It's a good overview (if a little bit preachy, as one reviewer stated) for them, although maybe more details than some are interested in. It will also help improve the image of the IRS. The Service isn't perfect, and there are occasional abuses by individuals. But it performs an important, even critical, function. They protect all of us from the bad apples among taxpayers and tax practitioners. I would not rate the book this highly for an audience of tax practitioners. First, because we're already aware of the broad outlines and many of the details. There may be new details here - I learned a few things - but we're often familiar with a lot of other detail not covered. (I didn't practice transactional tax, but a few of the taxpayers I represented during audits or litigation had invested in some of these shelters. I've seen the opinions, read the court cases, and was familiar with many of the names discussed in the book.) New entrants to the profession? It might be helpful for them, but less so for those of us who have been around for awhile. The second problem for an audience of tax practitioners: The authors are law professors but have little knowledge of tax law or complex financial transactions. Any time experts in a field read a book about the field by someone who is not an expert - which describes most non-fiction, not just this book - they will find things that are not quite right. For example, the discussion on pages 99-105 of the mechanism behind a common Son of BOSS shelter is to some degree over-simplified, missing key elements, misleading, or even clearly wrong in some aspects because the authors use technical terms incorrectly. (I'm surprised to see that tax law experts read drafts of the book and didn't correct these.) The comparison/contrast of the Helmer case and the Daugerdas shelters on page 197 is confused and muddled; it doesn't support the point the authors are trying to make. And the weighted average expected value analysis on page 200? It's simply wrong. The example the authors give, if calculated properly, doesn't - as they imply - demonstrate that there was no real expectation of a profit. It instead would support the taxpayer's position. The problem is that the assumptions in the example as to probability of various possible outcomes were totally unrealistic. The authors explain that very well immediately after the example. But the irritation at the mis-calculation of the example lingers. These examples, and others, will detract from the book for experts in the field. All of these things, though, are minor quibbles. Tax practitioners will notice them; most readers will not. And they don't detract from the overall theme and conclusions of the book.

For the layman, it's a reasonably accessible work and will give them a much better understanding of the IRS and what happened during this dark period. Hopefully, this account will also help dispel the idea that taxpayers can cheat the system without consequences. The IRS is still appalling underfunded, but it has more weapons to combat tax evasion than laymen realize. Especially today, it's harder to get away with massive tax evasion than some people assume. In that sense, the book may raise concerns - how do we prevent this in the future - while simultaneously comforting - the government was able to push back effectively.

The core of this book is a detailed discussion of the development of tax planning practices among US accounting and law firms in the 1990s and 2000s. The account is both readable and rich with insights.

A little difficult to get into and preachy at the end, but spectacular reporting in the middle.

A detailed recounting of an episode of tax fraud originating and encouraged at high levels across elite firms. Part a review of the quirks of tax practice, part organizational behavior, part a picture of how wishful thinking and narrow technical specialization can lead to missing the big picture. Provides good analysis of how the tax system in the US actually works. Marred by repetition, in gory detail, of the same episodes from multiple perspectives. Doubles the length with little value. Useful to me as an emerging tax practitioner - likely a deep snooze to those not in the industry.

I represented a KPMG defendant in the big criminal prosecution, so I knew, from that perspective, a lot of the matters discussed in the book. From that perspective, I wasn't sure what I would learn new from the book. The authors do a great job of mining some of the big themes there. They get the details pretty much correct, as best I can see it. But they deal with larger issues -- particularly, what was the mission drift that permitted big accounting and law firms do these deals when, in the past, they would not have touched them with the proverbial ten foot pole. Of course, it was greed and a type of groupthink and dispersion of responsibility that permitted the players to keep pushing the envelope -- ultimately across the line. Excellent read. History will repeat itself. These cycles will come back, particularly as big accounting firms and law firms look for ever increasing revenue and profits per equity partner.

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